

APPEAL NO. 030798
FILED MAY 19, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A consolidated contested case hearing (CCH) was held on March 3, 2003. The hearing officer resolved the disputed issues by deciding that the compensable injury of (first date of injury), does not include an injury to the low back, consisting of internal disc disruption, a disc protrusion, and an annular tear at the L5-S1 level, and the neck; that the compensable injury of (second date of injury), includes an injury to the low back, consisting of internal disc disruption, a disc protrusion, and an annular tear at the L5-S1 level, and a cervical sprain/strain; that the compensable injury of (third date of injury), does not include an injury to the low back, consisting of internal disc disruption, a disc protrusion, and an annular tear at the L5-S1 level, and the neck; and that the claimant has not had disability resulting from the compensable injury of (third date of injury). The claimant appealed the hearing officer's determinations regarding the (second date of injury), compensable injury and the (third date of injury), compensable injury. Respondent 3 (carrier 3) responded, requesting affirmance. No responses were received from Respondent 1 (carrier 1) or Respondent 2 (carrier 2). There is no appeal of the hearing officer's determination regarding the (first date of injury), compensable injury.

DECISION

Affirmed in part and reversed and rendered in part.

The hearing officer determined that the (third date of injury), compensable injury does not include a neck injury; however, she also determined that the (third date of injury), compensable injury includes a cervical strain. Those determinations are inconsistent. Carrier 3, the carrier for the (third date of injury), compensable injury, stated at the CCH that it had accepted a cervical strain and a lumbar strain, and it was undisputed that the injury resulted in at least a cervical strain and a lumbar strain. We reverse those portions of Finding of Fact No. 5, Conclusions of Law Nos. 5 and 6, and the hearing officer's decision which determine that the (third date of injury), injury does not include a neck injury, and we render a decision that the (third date of injury), compensable injury includes a neck injury in the form of a cervical strain, as was determined by the hearing officer.

Conflicting evidence was presented with regard to the disputed issues. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence in this case, we conclude that the hearing officer's determination that the compensable injury of (second date of injury), includes an injury to the low back, consisting of internal disc disruption, a disc protrusion, and an annular tear at the L5-S1 level, and a cervical sprain/strain is supported by sufficient evidence and is not so

against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We also conclude that the hearing officer's determination that the compensable injury of (third date of injury), does not include an injury to the low back, consisting of internal disc disruption, a disc protrusion, and an annular tear at the L5-S1 level, is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, supra. The hearing officer was not persuaded that the claimant had suffered an aggravation of a preexisting condition as was contended by the claimant.

With regard to the issue of whether the (third date of injury), compensable injury resulted in disability as defined by Section 401.011(16), it is clear that the hearing officer was not persuaded that the evidence showed that the (third date of injury), cervical and lumbar strains resulted in disability, and that her use of the term "current low back conditions" in Finding of Fact No. 6 and Conclusion of Law No. 6 is a reference to the disputed low back condition consisting of internal disc disruption, a disc protrusion, and an annular tear at the L5-S1 level, which the hearing officer determined is related to the compensable injury of (second date of injury), and not to the compensable injury of (third date of injury). We do not find the hearing officer's disability determination to be against the great weight and preponderance of the evidence. Cain, supra.

We reverse the hearing officer's determination that the (third date of injury), compensable injury does not include a neck injury, and we render a decision that the (third date of injury), compensable injury includes a neck injury in the form of a cervical strain, as was determined by the hearing officer. We affirm the hearing officer's determination that the compensable injury of (second date of injury), includes an injury to the low back, consisting of internal disc disruption, a disc protrusion, and an annular tear at the L5-S1 level, and a cervical sprain/strain. We affirm the hearing officer's determination that the compensable injury of (third date of injury), does not include an injury to the low back, consisting of internal disc disruption, a disc protrusion, and an annular tear at the L5-S1 level. We affirm the hearing officer's determination that the claimant has not had disability resulting from the compensable injury of (third date of injury).

The true corporate name of insurance carrier 1 is **TEXAS PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION for Reliance National Indemnity Company, an impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

The true corporate name of insurance carrier 2 is **OLD REPUBLIC INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

The true corporate name of insurance carrier 3 is **UNITED STATES FIDELITY & GUARANTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Robert W. Potts
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge